



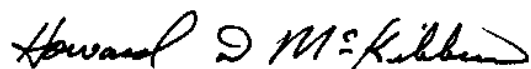
1       The Guideline provision applicable to defendant's offense is  
2 U.S.S.G. § 2K2.1. For purposes of § 2K2.1, "crime of violence" is  
3 given the meaning contained in § 4B1.2(a) and Application Note 1 of  
4 the Commentary to § 4B1.2. U.S.S.G. § 2K2.1 app. n.1. Under §  
5 4B1.2(a) at the time defendant was sentenced, a crime of violence  
6 was "any offense under federal or state law, punishable by  
7 imprisonment for a term exceeding one year, that (1) has as an  
8 element the use, attempted use, or threatened use of physical force  
9 against the person of another, or (2) is burglary of a dwelling,  
10 arson, or extortion, involves use of explosives, *or otherwise*  
11 *involves conduct that presents a serious potential risk of physical*  
12 *injury to another."* The final part of the definition - the  
13 italicized portion - was the residual clause.

14       Even assuming *Johnson* applies to the Guidelines, and that it  
15 does so retroactively on collateral review, defendant's claim for  
16 relief under current Ninth Circuit case law fails. The Ninth  
17 Circuit has held that assault with a deadly weapon is a crime of  
18 violence for purposes of 18 U.S.C. § 16(b). *Camacho-Cruz v.*  
19 *Holder*, 621 F.3d 941, 943 (9th Cir. 2010). As under § 4B1.2, a  
20 crime of violence under § 16(b) includes one "that has as an  
21 element the use, attempted use, or threatened use of physical force  
22 against the person . . . of another." *Id.* at 942. This is  
23 referred to as the force clause. Section 16(b) also contains a  
24 residual clause similar to that in the ACCA and § 4B1.2. In  
25 *Camacho-Cruz*, the Ninth Circuit held that assault with a deadly  
26 weapon under Nevada law "necessarily entails the threatened use of  
27 force against the person of another," and for that reason qualified  
28 as a crime of violence. *Id.* at 493. The court further held that §

1 200.471 also qualified as a crime of violence under § 16(b)'s  
2 residual clause. While defendant appears to suggest in his motion  
3 that § 200.471 was a crime of violence only under the residual  
4 clause, this ignores the court's holding that it also qualified  
5 under the force clause. Accordingly, the holding of *Camacho-Cruz*  
6 that § 200.471 qualifies as a crime of violence is not disturbed by  
7 the Supreme Court's decision in *Johnson* because even if the  
8 residual clause of § 4B1.2 is unconstitutional, the crime still  
9 qualifies under the force clause. The fact that the Ninth Circuit  
10 continues to apply *Camacho-Cruz* in its recent unpublished decisions  
11 reinforces this conclusion. See *United States v. Alcaraz*, 2016 WL  
12 6471774, at \*1 (9th Cir. Nov. 2, 2016) ("Defendant's prior  
13 conviction[] for assault with a deadly weapon, in violation of  
14 Nevada Revised Statute § 200.471 . . . qualif[ies] as [a] crime[]  
15 of violence for purposes of applying United States Sentencing  
16 Guideline § 2K2.1(a)."); *United States v. Herrera-Ramirez*, 623 Fed.  
17 App'x 347, 348 (9th Cir. Nov. 18, 2015). Accordingly, because  
18 assault with a deadly weapon in violation of Nevada Revised Statute  
19 § 200.471 "necessarily entails the threatened use of force against  
20 the person of another," it is a crime of violence with or without  
21 the residual clause. Defendant therefore is not entitled to any  
22 relief, and his motion to vacate under 28 U.S.C. § 2255 (ECF No. 44  
23 and ECF No. 45) is **DENIED**.

24 IT IS SO ORDERED.

25 DATED: This 4th day of January, 2017.

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28 UNITED STATES DISTRICT JUDGE